

**FILED**  
**DISTRICT COURT OF GUAM**  
**AUG - 3 2004**  
**MARY L. M. MORAN**  
**CLERK OF COURT**

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ORIGINAL

1 a loan to Defendant GUAM YTK, as evidenced by the Agreement attached to the  
2 Complaint as **Exhibit "A"**, and seeks damages for failure to repay the loan pursuant  
3 to the terms of the Agreement. Defendant GUAM YTK has denied that the transaction  
4 was a loan and affirmatively pled that it was another form of investment and that  
5 nothing is owed to Plaintiff KAIOH.

6 (b) The parties are: KAIOH SUISAN CO., LTD., a foreign corporation  
7 organized and existing under the laws of Japan, Plaintiff; and, GUAM YTK CORP., a  
8 corporation organized, existing and doing business under the laws of Guam,  
9 Defendant.

10 Each of these parties has been served and has appeared. All other parties  
11 named in the pleadings and not identified in the proceeding paragraphs are now  
12 dismissed.

13 (c) The pleadings, which raise the issues are:

14 Complaint, filed August 1, 2002

15 Answer to Complaint, filed August 16, 2002

16 **2. Jurisdiction and venue are invoked upon the grounds:**

17 Diversity of citizenship of the parties, pursuant to 28 U.S.C. §1332. The amount  
18 due and payable, pursuant to the terms of the Agreement as of September 1, 2003, is  
19 One Hundred Million Japanese Yen (¥100,000,000) with a dollar equivalent of Eight  
20 Hundred Sixteen Thousand Seven Hundred Seventy Five Dollars and 60/100  
21 (\$816,775.60), which exceeds the jurisdictional amount of Seventy-Five Thousand  
22 Dollars (\$75,000.00). The facts requisite to federal jurisdiction are admitted.  
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1           3.     **The following facts are admitted and require no proof:**

2           The Court has jurisdiction over this matter and the amount in controversy  
3 exceeds \$75,000.00.

4           Plaintiff KAIOH at all times relevant herein, is a foreign corporation organized  
5 and existing under the laws of Japan.

6           Defendant GUAM YTK is a corporation organized, existing and doing business  
7 under the laws of Guam.

8           On or about March 10, 2001, Plaintiff KAIOH and Defendant GUAM YTK  
9 entered into an Agreement by which Defendant GUAM YTK <sup>purportedly</sup> borrowed ¥100,000,000  
10 from Plaintiff KAIOH; and that the actual transfer of the funds to Defendant GUAM  
11 YTK was accomplished by way of two (2) wire transfers of Fifty Million Japanese Yen  
12 (¥50,000,000) through a corporate subsidiary of Plaintiff KAIOH.

13           Pursuant to the terms of the <sup>alleged</sup> Agreement, Defendant GUAM YTK is required to  
14 repay the loan in installments of Five Million Japanese Yen (¥5,000,000) at the end of  
15 each month beginning with January of 2002; Defendant GUAM YTK is required to pay  
16 interest of two percent (2%) per annum from the date of the transfer of the funds, to be  
17 calculated and paid after the final payment of principal is due; as of the end of August  
18 of 2003, the entire ¥100,000,000 is due and payable, Defendant GUAM YTK has not  
19 paid any of this amount.

20           During the course of negotiating the Agreement, Tom Kamiyama, the President  
21 of Defendant GUAM YTK, signed a letter that is addressed to the Chairman of the  
22 Board of Plaintiff KAIOH requesting a loan of ¥100,000,000 on terms similar to those  
23 set forth in the Agreement. The letter is Plaintiff KAIOH's Exhibit "3".  
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1           4.     **The reservations as to the facts recited in paragraph 3, above, are**  
2 **as follows:** None.

3           5.     **The following facts, though not admitted, are not to be contested at**  
4 **the trial by evidence to the contrary:** None.

5           6.     **The following issues of facts, and no others, remain to be litigated**  
6 **at the trial:**

7           Defendant GUAM YTK asserts that, notwithstanding the written Agreement and  
8 other documentation presented by Plaintiff KAIOH, that the transaction in question was  
9 not a loan but part of the investment in a fishing enterprise they were involved in.  
10 Defendant GUAM YTK will offer evidence to prove that all funds were expended in  
11 furtherance of the joint fishing enterprise and that the parties successfully engaged in  
12 the enterprise for over a year.

13           Defendant GUAM YTK will prove that the documents were not drafted by  
14 Defendant GUAM YTK and that the documents were explained to Tom Kamiyama by  
15 Plaintiff's officials and the explanation did not include "loan" or that the documents  
16 were for a loan transaction.

17           Defendant GUAM YTK will also prove that if the documents are construed as a  
18 valid loan, Plaintiff's officials and the explanation did not include "loan" or that the  
19 documents were for a loan transaction.

20           Defendant GUAM YTK will also prove that if the documents are construed as a  
21 valid loan, Plaintiff did not possess a business license or exemption permitting it to  
22 maintain an action at law.  
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1           7.     **The following issues of law, and no others, remain to be litigated at**  
2 **the trial:**

3           Whether Defendant GUAM YTK is precluded by 6 G.C.A. §2511, the Guam  
4 parol evidence rule, from using extrinsic evidence to vary or contradict the terms of the  
5 Agreement.

6           Whether Defendant GUAM YTK is bound by a document voluntarily signed by  
7 its President even if he did not understand English.

8           Whether Plaintiff KAIOH was required to have a Guam business license in  
9 order to bring this action.

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11           8.     **All discovery is complete.**

12           9.     **The Exhibit Lists of the parties have been filed with the Court as**  
13 **required by Local Rule 16.7. The parties anticipate the following objections to**  
14 **the exhibits listed below: None**

15           10.    **Witness lists of the parties have heretofore been filed with the Court**  
16 **as required in Local Rule 16.7.** (Except for good cause shown, only the witnesses  
17 identified in the list will be permitted to testify other than for impeachment or rebuttal.)

18           11.    **Each party intending to present evidence by way of deposition**  
19 **testimony has marked such depositions in accordance with Local Rule 32.1. For**  
20 **this purpose, the following depositions shall be lodged with the clerk as**  
21 **required by Local Rule 32.1: None**

22           12.    **The following law and motion matters are pending or contemplated:**  
23 **None**  
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